

ATTACHMENT - REMARKS

By this Amendment, independent claims 17 and 44 have been further amended for clarity and to more clearly differentiate over the cited reference. Various dependent claims have also been amended to provide an inadvertently omitted word. Finally the non-elected claims have been canceled, as well as independent claims 27-28. It is submitted that the present application is in condition for allowance for the following reasons.

ALLOWABLE SUBJECT MATTER

Initially in the Detailed Action, the examiner has noted that dependent claims 22 and 54 contained allowable subject matter, and hence that these claims would be allowable if rewritten in independent form. In addition, the examiner has suggested changes to claim 17 including the subject matter of claim 54 which would make it allowable. This indication of allowable subject matter and proposed claim language is appreciated.

However, in view of the below-noted changes to the independent claims (including some language suggested by the examiner), it is submitted that amended claims 17 and 44 are now each allowable without the subject matter of either dependent claim 22 or claim 54; and hence dependent claims 22 and 54 are also allowable but without being rewritten in independent form.

RESTRICTION

Next in the Detailed Action, the examiner has made the previous restriction requirement of withdrawn claims 1-16 and 29-43 final. In response thereto, it will be noted that the non-elected have all been canceled, but without prejudice for filing in a subsequent divisional application.

It will also be noted that elected independent claims 27 and 28 have also been canceled. This has been done to simplify the issues in this application; and is also accomplished without prejudice for filing in a continuing application.

CLAIM OBJECTIONS

In this section of the Action, the examiner noted the omission of the word "in" in the preambles to claims 45-50 and 54-57. By this Amendment and as suggested, the inadvertently omitted word has been added to these claims.

CLAIM REJECTIONS - 35 USC § 102

In the Claim Rejections - 35 USC § 102 section, independent claims 17 and 44 (and 27, 28, now canceled) as well as dependent claims 18, 23-24, and 56, were all rejected under 35 USC § 102 as being anticipated by Sakata. However, for the following reasons, it is submitted that these claims are all allowable over this reference.

The present invention as now more clearly recited in the independent claims 17 and 44 is characterized by irradiating an electron beam onto a specimen and analyzing the spectrum of light generated in the specimen ONLY from the irradiated electrons. The examiner had suggested in the Action that such use "only" of the electron beam and the configuration of the elements was not previously recited, and had in the

suggested claim proposed such a recitation. In addition, it will be appreciated that independent claims 17 and 44 are also amended to recite the structural operative configuration of the associated elements to additionally distinguish from the mere similar but unassociated elements of the prior art.

In the Action, the Examiner has misinterpreted the technical content or structure of the stress measuring device described in Sakata, and therefore, the grounds presented in response to the invention described in the independent claim 17 and the independent claim 44 of the present application are insufficient. That is, it has been mentioned in the 20th paragraph of the final Office Action that Sakata includes all of the components (A) to (C) described in claim 17 of the present application; but this by itself is insufficient, especially in view of the recitations and associations now particularly made.

This is because the invention of the present application clearly differs in that, in the component (C), the spectrum of the generated light is a spectrum to be obtained by irradiating a specimen with only an electron beam. In Sakata, the spectrum is not a spectrum to be obtained by irradiation of an electron beam, but a spectrum to be obtained by irradiating a laser light. Therefore, the theory described in the 20th section of the final OFFICE ACTION does not hold for the recitations now particularly provided in independent claims 17 and 44.

In addition, an electron beam used in Sakata, as has been asserted so far, has been used for obtaining secondary electrons to visualize and specify a stress measuring position. It does not directly contribute to detection of a stress measurement value; and

hence there is no configuration of the elements in Sakata as is now particularly claimed in independent claims 17 and 44.

More specifically, the device described in Sakata merely irradiates an electron beam emitted from an electron gun 1 onto a specimen 6, detects secondary electrons thereby generated by means of a detector 7, and finally displays a surface morphology of the specimen 6 as an image based on the secondary electrons via a computer 8 by means of an image processor 9. Accordingly, in the device of Sakata, unlike the invention of the present application, an electron beam emitted from the electron gun 1 is not involved at all in a stress measurement itself.

In addition, the device of Sakata does not include an optical fiber or have a condenser mirror for guiding an electron beam to the optical fiber provided in proximity to the specimen 6 as in the device according to the invention of the present application; and thus Sakata cannot measure stress by an electron-stimulated spectrum due to irradiation with an electron beam as in the invention of the present application. The half-mirror 14 described in the device of Sakata does not provide the function of the condenser mirror mentioned above.

Further, it has been described in the eighth section of the final OFFICE ACTION that Figure 1 of Sakata shows irradiating a sample with an electron beam and then focusing light from the sample in response to the electron beam to a spectrometer and stress calculating unit by a half-mirror; but in Sakata, not light from a sample in response to an electron beam but light from a sample in response to a laser light emitted from a laser light source 10 is focused, and there is a misunderstanding in this point. In particular, there is no teaching or suggestion that the electron beam in Sakata

produces any light from the specimen, much less the only light useful in a stress measurement.

Therefore, for all of the foregoing reasons, it is submitted that amended independent claims 17 and 44 are neither disclosed nor made obvious by Sakata, so that these claims are all allowable over Sakata. And for at least these same reasons, it is also submitted dependent claims 18, 23-24 and 56, as well as the remaining claims which are all dependent on respective ones of independent claims 17 or 44, are likewise allowable.

In the Claim Rejections - 35 USC § 103 section, dependent claims 19-20, 25-26, 47-53 and 57 were all rejected under 35 USC § 103 as being obvious over Sakata in view of Pezzotti (1999). However, as described above, because Sakata is clearly different from the invention of the present application as claimed in amended independent claims 17 or 44, the invention of the present application in these dependent claims likewise cannot be obvious even by the combination of Sakata and Pezzotti. That is, as asserted before, Sakata and Pezzotti merely disclose techniques for a stress measurement by the conventional Raman spectroscopy. Nevertheless, the Examiner knowing the content of the invention of the present application, ex post facto, has inappropriately applied the invention of the present application to the device of Sakata that is clearly different from the invention of the present application particularly as now claimed.

Consequently, the invention of dependent claims 19-20, 25-26, 45-50 and 55-57 are not obvious by the combination of Sakata and Pezzotti.

For all of the foregoing reasons, it is submitted that the present application is in condition for allowance and such action is solicited.

Respectfully submitted,

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